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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,305	04/01/2004	Luc Gourlaouen	05725.1309-00	8593

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EXAMINER

ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/814,305

Applicant(s)

GOURLAOUEN ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26, 29-56 and 60-68 is/are rejected.
- 7) ☒ Claim(s) 27-28 and 57-59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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Claims 1-68 are pending in this application.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6, 8, 10, 16-26, 29-34, 36-56 and 60-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Laurent et al. (US 2002/0046431 A1).

Matsunaga et al. (US' 206 A1) teaches a hair dyeing composition comprising a fluorescent of azomethine compound of a formula (2) as claimed in claims 1, 25-26 and 40 (see page 1, formula (2)), which is similar to the claimed formula (F2), and wherein the fluorescent compound would obtained physical properties similar to those claimed in claims 18-24, wherein the fluorescent compound is presented in the composition in the amounts of 0.01 to 20% , 0.05 to 10% or 0.1 to 5% as claimed in claims 29-31 (see pages 2-3, paragraph, 0016), wherein the composition further comprises additional direct dyes such as nitro dyes in the amounts of 0.05 to 10% which within the claimed range as claimed in claims 32-34 (see page 3, paragraphs, 0017 and, 0023), oxidation bases such a para-phenylenediamine and couplers such as m-phenylenediamine in the percentage amounts of 0.01 to 20% and 0.5 to 10% which are overlapped with the claimed ranges as claimed in claims 36-39 (see page 3, paragraphs, 0020, 0021 and 0023), oxidizing agents such as hydrogen peroxide, perborates and laccase enzyme

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(four-electron oxidoreductase) as claimed in claims 41-43 (see page 3, paragraphs, 0018 and 0019), Matsunaga et al. (US' 206 A1) also teaches a multi-compartment device and a process for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the device and process are similar to those claimed in claims 44-45, 49-56, 60-62 and 66 (see page 3, paragraph, 0026).

The instant claims differ from the reference by reciting a composition comprising at least one associative polymer chosen from the claimed polymers.

However, Matsunaga et al. (US' 206 A1) suggests the use of cationic or amphoteric polymers in the hair dyeing composition (see page 3, paragraph, 0024).

Laurent et al. (US' 431 A1) in analogous art of keratin fibers dyeing formulation, teaches a composition comprising cationic amphiphilic polymers such as cationic polyurethanes of a formula (Ia), which is similar to the claimed formula (Ia) as claimed in claims 1-2, 4-6 and 10 (see page 3, paragraphs, 0096-0104 and page 6, paragraph, 0157), wherein the cationic polymer is chosen from quaternized hydroxyethylcellulose as claimed in claim 8 (see page 2, paragraph, 0061) and wherein the associative polymers are presented in the amounts of 0.01 to 3% and 0.02 to 0.5% as claimed in claims 16-17 and 63-64 (see page 9, paragraph, 0220).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga et al. (US' 206 A1) by incorporating the cationic polymers as taught by Laurent et al. (US' 431 A1) to make such a composition. Such a modification would be obvious because Matsunaga et al. (US' 206 A1) as the primary reference suggests the use of the cationic polymers in the hair dyeing composition (see page 3, paragraph, 0024). Laurent et al. (US' 431

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A1) as a secondary reference clearly teaches the claimed cationic polymers, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the claimed cationic polymers as taught by Laurent et al. in the composition of Matsunaga et al. with a reasonable expectation of success for improving the performance of the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 46-48, 65 and 67-68, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a dying composition to any human keratin materials as claimed because the disclosures of the combined references clearly teach the claimed dyeing ingredients (fluorescent and cationic associative polymers), which should have similar properties and could applied to similar human keratin materials. Further, Laurent et al. (US' 431), clearly teaches that the composition is used for oxidation dyeing of keratinous fibers, such as human keratinous fibers like hair (see page 1, paragraph, 0001), which implies that the composition is not limited to the hair and can be applied to any keratinous fibers beside the hair, and, thus, a person of the ordinary skill in the art would expect such a composition be used or be applied to any keratinous fibers with different tone heights include skin, and would expect such a composition to have properties and effects similar to those claimed, absent unexpected results.

2        Claims 3, 7, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1).

The disclosures of Matsunaga (US' 206 A1) as described above, does not teach or disclose the claimed anionic and nonionic associative polymers as claimed.

However, the reference of Matsunaga et al. (US' 206 A1), generally suggests the use of natural and synthetic polymers in the dyeing composition (see page 3, paragraph, 0025).

Cottard et al. (US' 514 A1) in analogous art of hair dyeing formulation, teaches a composition comprising anionic polymer comprising a unit (monomer) derived from  $\alpha,\beta$ -monoethylenically unsaturated carboxylic acid type as claimed in claim 3 (see page 4, paragraph, 0068), nonionic polyether polyurethane polymer as claimed in claim 7 (see page, paragraph, 0086), nonionic polymer of hydroxyethylcellulose modified by at least one group comprising at least one fatty chain such as alkyl (hydrophobic chain) as claimed in claim 9 (see page 4, paragraph, 0077), nonionic copolymer formed from vinylpyrrolidone and at least one hydrophobic monomer comprising at least one fatty chain as claimed in claim 11 (see page 4, paragraph, 0081) and anionic polymers as claimed in claims 12-15 (see page 3, paragraph, 0063 and page 4, paragraph, 0072).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the anionic and nonionic polymers as taught by Cottard et al. (US' 514 A1) to make such a composition. Such a modification would be obvious because the primary reference of Matsunaga et al. (US' 206 A1) suggest the use of the natural and synthetic polymers in the dyeing composition (see page 3, paragraph, 0025). Cottard et al. (US' 514 A1) as a secondary reference clearly teaches and discloses anionic and nonionic polymers as claimed, and, thus, a person of the ordinary skill in the art would be motivated to incorporate these anionic and nonionic polymers as taught by Cottard et al. (US' 514 A1) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for

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improving the performance of the dyeing and would expect such a composition to have similar properties to those claimed, absent unexpected results.

3 Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1) and further in view of Giuseppe et al. (US 5,744,127).

The disclosures of Matsunaga (US' 206 A1) and Cottard et al. (US' 514 A1), as described above, do not teach or disclose dyeing compositions in forms of dyeing shampoos as claimed.

However, Matsunaga et al. (US' 206 A1) clearly teaches that No particular limitation is imposed on the form of the hair dyeing composition (see page 3, paragraph, 0027).

Giuseppe et al. (US' 127) in other analogous art of hair treating formulation, teaches compositions formulated as a hair shampoo and hair dyeing as well (see col. 6, lines 5-6).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to formulate the dyeing composition of Matsunaga et al. in a shampoo form as taught by Giuseppe et al. to arrive at the claimed composition. Such a modification would be obvious because Giuseppe et al. clearly teaches that the dyeing composition can be formulated in a shampoo form, and, thus, one having ordinary skill in the art would be motivated to formulate the dyeing composition in any form includes the shampoo form, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Applicants have not shown on record the criticality of the ingredients in the claimed invention.

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*Allowable Subject Matter*

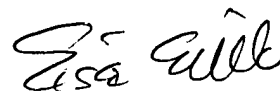
4 Claims 27-28 and 57-59 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record do not teach or disclose the limitations of these claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

March 12, 2006